

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GUILLERMO RENTERIA-NOVOA,

Plaintiff,

v.

ISIDRO BACA, et al.,

Defendants.

Case No. 3:15-cv-00537-MMD-VPC

ORDER

Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections (“NDOC”), has submitted an amended civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed an application to proceed *in forma pauperis*. (ECF No. 3, 1-1.) The matter of the filing fee will be temporarily deferred. Plaintiff filed an amended complaint before the Court screened his initial complaint. Accordingly, the Court now screens Plaintiff’s amended civil rights complaint pursuant to 28 U.S.C. § 1915A.

I. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th

1 Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
2 elements: (1) the violation of a right secured by the Constitution or laws of the United
3 States, and (2) that the alleged violation was committed by a person acting under color
4 of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

5 In addition to the screening requirements under § 1915A, pursuant to the Prison
6 Litigation Reform Act (PLRA), a federal court must dismiss a prisoner's claim, if "the
7 allegation of poverty is untrue," or if the action "is frivolous or malicious, fails to state a
8 claim on which relief may be granted, or seeks monetary relief against a defendant who
9 is immune from such relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure
10 to state a claim upon which relief can be granted is provided for in Federal Rule of Civil
11 Procedure 12(b)(6), and the court applies the same standard under § 1915 when
12 reviewing the adequacy of a complaint or an amended complaint. When a court
13 dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the
14 complaint with directions as to curing its deficiencies, unless it is clear from the face of
15 the complaint that the deficiencies could not be cured by amendment. See *Cato v.*
16 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

17 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
18 *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for
19 failure to state a claim is proper only if it is clear that the plaintiff cannot prove any set of
20 facts in support of the claim that would entitle him or her to relief. See *Morley v. Walker*,
21 175 F.3d 756, 759 (9th Cir. 1999). In making this determination, the court takes as true
22 all allegations of material fact stated in the complaint, and the court construes them in
23 the light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957
24 (9th Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards
25 than formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980).
26 While the standard under Rule 12(b)(6) does not require detailed factual allegations, a
27 plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp. v.*

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1 *Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of
 2 action is insufficient. *Id.*

3 Additionally, a reviewing court should “begin by identifying pleadings [allegations]
 4 that, because they are no more than mere conclusions, are not entitled to the
 5 assumption of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal
 6 conclusions can provide the framework of a complaint, they must be supported with
 7 factual allegations.” *Id.* “When there are well-pleaded factual allegations, a court should
 8 assume their veracity and then determine whether they plausibly give rise to an
 9 entitlement to relief.” *Id.* “Determining whether a complaint states a plausible claim for
 10 relief . . . [is] a context-specific task that requires the reviewing court to draw on its
 11 judicial experience and common sense.” *Id.*

12 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed
 13 *sua sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This
 14 includes claims based on legal conclusions that are untenable (e.g., claims against
 15 defendants who are immune from suit or claims of infringement of a legal interest which
 16 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
 17 fantastic or delusional scenarios). See *Neitzke v. Williams*, 490 U.S. 319, 327-28
 18 (1989); see also *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

19 **II. SCREENING OF COMPLAINT**

20 Plaintiff sues multiple defendants for events that occurred while he was
 21 incarcerated at Northern Nevada Correctional Center (“NNCC”). (ECF No. 3 at 1.) He
 22 sues Warden Isidro Baca, Candi Brockway, John Keast, Romeo Aranas, and John/Jane
 23 Doe. (*Id.* at 2-3.) He alleges two counts and seeks monetary damages. (*Id.* at 4-5, 9.)

24 Plaintiff alleges the following in his complaint: He suffers from a foot injury that
 25 requires surgery. (*Id.* at 4.) On December 5, 2013, Dr. Gedney referred Plaintiff’s case
 26 for approval of surgery to Warden Baca, Medical Director Dr. Aranas, and Director of
 27 Nursing Keast, but surgery was denied. (*Id.*) On June 17, 2014, two of Plaintiff’s toes
 28 became dislocated. (*Id.*) A surgery request was made again and denied. (*Id.*) On August

11, 2014, Plaintiff was told by Ms. Brockway that he would be scheduled for surgery. (*Id.*) Surgery was denied by the medical director on March 25, 2015. (*Id.*) Dr. Aranas ordered insoles for Plaintiff's shoes. (*Id.*) Plaintiff alleges that he would file grievances requesting treatment for his foot injury, or a basic pair of shoes, and in retaliation for filing these grievances, defendants, specifically Dr. Aranas, would deny Plaintiff treatment for his foot injury. (*Id.* at 5.) Plaintiff alleges that he was denied surgery three times and that Warden Baca told him filing grievances interferes with treatment. (*Id.*) Plaintiff also alleges he had surgery cancelled at the last minute and that special footwear was taken away. (*Id.* at 3.)

10 **A. Count I — Eighth Amendment**

11 The Eighth Amendment prohibits the imposition of cruel and unusual punishment
12 and “embodies ‘broad and idealistic concepts of dignity, civilized standards, humanity,
13 and decency.’” *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). A prison official violates the
14 Eighth Amendment when he acts with “deliberate indifference” to the serious medical
15 needs of an inmate. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). “To establish an
16 Eighth Amendment violation, a plaintiff must satisfy both an objective standard — that
17 the deprivation was serious enough to constitute cruel and unusual punishment — and
18 a subjective standard — deliberate indifference.” *Snow v. McDaniel*, 681 F.3d 978, 985
19 (9th Cir. 2012).

20 To establish the first prong, “the plaintiff must show a serious medical need by
21 demonstrating that failure to treat a prisoner's condition could result in further significant
22 injury or the unnecessary and wanton infliction of pain.” *Jett v. Penner*, 439 F.3d 1091,
23 1096 (9th Cir. 2006) (internal quotations omitted). To satisfy the deliberate indifference
24 prong, a plaintiff must show “(a) a purposeful act or failure to respond to a prisoner's
25 pain or possible medical need and (b) harm caused by the indifference.” *Id.*
26 “Indifference may appear when prison officials deny, delay or intentionally interfere with
27 medical treatment, or it may be shown by the way in which prison physicians provide
28 medical care.” *Id.* (internal quotations omitted). When a prisoner alleges that delay of

1 medical treatment evinces deliberate indifference, the prisoner must show that the delay
2 led to further injury. See *Shapley v. Nevada Bd. of State Prison Comm'rs*, 766 F.2d 404,
3 407 (9th Cir. 1985) (holding that "mere delay of surgery, without more, is insufficient to
4 state a claim of deliberate medical indifference").

5 Plaintiff has not stated a colorable Eighth Amendment claim. While Plaintiff
6 alleges that his surgery has been delayed, mere delay is insufficient to state an Eighth
7 Amendment claim. See *id.* It is unclear whether Plaintiff has received any treatment for
8 his foot injury. It is only clear that he has not received the surgery he alleges is
9 necessary. Plaintiff's allegations regarding the delay do not rise to the level of deliberate
10 indifference. "[A] complaint that a physician has been negligent in diagnosing or treating
11 a medical condition does not state a valid claim of medical mistreatment under the
12 Eighth Amendment. Medical malpractice does not become a constitutional violation
13 merely because the victim is a prisoner." *Estelle*, 429 U.S. at 106. Even gross
14 negligence is insufficient to establish deliberate indifference to serious medical needs.
15 See *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004). Plaintiff wishes to have
16 surgery on his foot. These requests have been denied. "A difference of opinion between
17 a prisoner-patient and prison medical authorities regarding treatment does not give rise
18 to a § 1983 claim." *Franklin v. State of Or., State Welfare Div.*, 662 F.2d 1337, 1344 (9th
19 Cir. 1981). Plaintiff's claim is dismissed without prejudice, with leave to amend.

20 Additionally, Plaintiff references attached exhibits in his complaint. (ECF No. 3 at
21 5.) Plaintiff must include all his allegations in the body of the complaint itself. The Court
22 is not required to sift through other filings and exhibits in attempting to piece together
23 Plaintiff's claim for him. See, e.g., *Turner v. Grievance Coordinator, et al.*, No. 2:13-cv-
24 02126-APG-PAL, 2014 WL 3002082, *3 (D. Nev. June 30, 2014). Upon amendment,
25 Plaintiff should include all his allegations, including dates and names, in the body of the
26 amended complaint itself. The Court directs Plaintiff to follow the directions in the form
27 complaint and "[s]tate the facts clearly, in your own words, and without citing legal
28 authority or argument . . . describe exactly what *each defendant (by name)* did to violate

1 your rights.” Plaintiff should be clear on which defendants, by name, were involved and
2 how.

3 **B. Count II — Retaliation**

4 Prisoners have a First Amendment right to file prison grievances and to pursue
5 civil rights litigation in the courts. *Rhodes v. Robinson*, 408 F.3d 559, 567 (9th Cir.
6 2004). “Without those bedrock constitutional guarantees, inmates would be left with no
7 viable mechanism to remedy prison injustices. And because purely retaliatory actions
8 taken against a prisoner for having exercised those rights necessarily undermine those
9 protections, such actions violate the Constitution quite apart from any underlying
10 misconduct they are designed to shield.” *Id.*

11 To state a viable First Amendment retaliation claim in the prison context, a
12 plaintiff must allege: “(1) [a]n assertion that a state actor took some adverse action
13 against an inmate (2) because of (3) that prisoner’s protected conduct, and that such
14 action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action
15 did not reasonably advance a legitimate correctional goal.” *Id.* at 567-68.

16 Plaintiff alleges that he would file grievances requesting medical treatment and
17 this would result in a delay of his medical treatment. Plaintiff has not stated a colorable
18 retaliation claim. Other than the conclusory allegation that Dr. Aranas “has denied any
19 measure of treatment in retaliation for the Plaintiff’s grievances,” Plaintiff fails to show
20 any causal connection between his protected conduct and any adverse action taken
21 against him. If Plaintiff seeks to amend his pleadings, upon amendment he should focus
22 on the causal connection between any alleged adverse action and his alleged protected
23 conduct. This claim is dismissed without prejudice, with leave to amend.

24 **C. Leave to Amend**

25 Plaintiff is granted leave to file a second amended complaint to cure the
26 deficiencies of the complaint. If Plaintiff chooses to file an amended complaint he is
27 advised that an amended complaint supersedes the original complaint and, thus, the
28 amended complaint must be complete in itself. See *Hal Roach Studios, Inc. v. Richard*

1 *Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding that “[t]he fact that a
2 party was named in the original complaint is irrelevant; an amended pleading
3 supersedes the original”); see also *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir.
4 2012) (holding that for claims dismissed with prejudice, a plaintiff is not required to
5 reallege such claims in a subsequent amended complaint to preserve them for appeal).
6 Plaintiff’s second amended complaint must contain all claims, defendants, and factual
7 allegations that Plaintiff wishes to pursue in this lawsuit. Moreover, Plaintiff must file the
8 amended complaint on this Court’s approved prisoner civil rights form and it must be
9 entitled “Second Amended Complaint.”

10 The Court notes that if Plaintiff chooses to file a second amended complaint
11 curing the deficiencies, as outlined in this order, Plaintiff must file the second amended
12 complaint within thirty (30) days from date of entry of this order. If Plaintiff chooses not
13 to file a second amended complaint, the Court will dismiss the action without prejudice.

14 **III. CONCLUSION**

15 For the foregoing reasons, it is ordered that a decision on the application to
16 proceed *in forma pauperis* (ECF No. 1) is deferred.

17 It is further ordered that Plaintiff’s amended complaint (ECF No. 3) is dismissed
18 without prejudice, with leave to amend.

19 It is further ordered that if Plaintiff chooses to file a second amended complaint
20 curing the deficiencies of his complaint, as outlined in this order, Plaintiff must file the
21 second amended complaint within thirty (30) days from the date of entry of this order.

22 It is further ordered that the Clerk of the Court send to Plaintiff the approved form
23 for filing a § 1983 complaint, instructions for the same, a copy of his amended complaint
24 (ECF No. 3). If Plaintiff chooses to file a second amended complaint, he must use the
25 approved form and he must write the words “Second Amended” above the words “Civil
26 Rights Complaint” in the caption.

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1 It is further ordered that if Plaintiff fails to file a second amended complaint curing
2 the deficiencies outlined in this order, this action will be dismissed without prejudice.

3 DATED THIS 4th day of May 2016.

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7 UNITED STATES DISTRICT JUDGE
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